IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN, ETC., ET AL.,

Petitioners,

vs.

CHICAGO RIVER AND INDIANA RAILROAD COMPANY, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE

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Dated at Toledo, Ohio, this
9th day of January, 1957.

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Preliminary Statement — Interest of the Amicus Curiae.

This case squarely presents two questions of vital importance to the rights of employees in the railroad industry under the Railway Labor Act and the Norris-LaGuardia Act. The decision of the court below, if permitted to stand, would destroy their basic right to strike in perhaps the broadest field of management-labor relations, and would implement that destruction by returning railroad labor disputes to the Federal courts for disposition by injunctive decree.

Specifically, the Court of Appeals below held that the

creation of the National Railroad Adjustment Board by the 1934 amendments to the Railway Labor Act had the two-fold effect of outlawing strikes over the broad range of contract claims and grievances which the Board was given authority to decide, and of repealing the Norris-LaGuardia Act *pro tanto*, so as to give the Federal courts jurisdiction to enjoin such strikes.

The Railway Labor Executives' Association, on whose behalf this brief as *amicus curiae* is presented, is a voluntary unincorporated association, with which are affiliated the following standard international railway labor organizations:

American Railway Supervisors' Association
American Train Dispatchers' Association
Brotherhood of Locomotive Firemen and Enginemen
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen of America
Brotherhood of Railroad Trainmen
Brotherhood Railway Carmen of America
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees
Brotherhood of Sleeping Car Porters
Hotel & Restaurant Employees and Bartenders International Union
International Association of Machinists
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen & Oilers, Helpers, Roundhouse & Railway Shop Laborers
International Organization Masters, Mates & Pilots of America
National Marine Engineers' Beneficial Association
Order of Railway Conductors and Brakemen
Railroad Yardmasters of America
Railway Employes' Department, AFL-CIO
Sheet Metal Workers' International Association
Switchmen's Union of North America
The Order of Railroad Telegraphers

The principal office of said Association is located at 401 Third Street, N.W., Washington 1, D.C.

The foregoing organizations affiliated with the Railway Labor Executives' Association represent, for purposes of collective bargaining under the Railway Labor Act, more than one million railroad employees. Each of said affiliated organization is a party to collective bargaining agreements between it and nearly every railroad in the United States, governing the rates of pay, rules and working conditions of said employees. Said organizations are under a statutory duty to exert every reasonable effort to make and maintain such agreements and to settle all disputes with respect to their interpretation or application.

The holding of the court below adopts a philosophy of compulsion and litigation which not only would be crippling in its effect upon the ability of these organizations effectively to fulfill their representative function, but would be entirely foreign to the principles which have motivated Congressional action in the labor relations field, and which have been recognized in previous decisions of this Court.

It is our position that the court below erred both in holding that the Railway Labor Act outlawed strikes of the type in question, and in sustaining the jurisdiction of the District Court to grant injunctive relief against such a strike.

Summary of Argument

Stated in summary form, the propositions which will be supported in our argument are as follows:

I. The Railway Labor Act was not intended to outlaw strikes in support of employee grievances or claims based on asserted violations of their contractual employ-

ment rights. When it amended the Act in 1934 to create the National Railroad Adjustment Board, a specialized administrative tribunal for the handling of such disputes, Congress did not make resort to such tribunal compulsory. The availability of the administrative remedy was calculated to minimize strikes over such disputes but not prohibit them. The Congressional approach to government regulation of labor relations has been characterized by a reluctance to resort to compulsion, and a continued reliance upon voluntary processes looking to settlement rather than adjudication of disputes.

The common law right to strike over such disputes was well recognized. Neither the language nor the legislative history of the Railway Labor Act, and particularly the 1934 amendments thereto, support the conclusion that, by implication only, a prohibition against strikes is to be found in the creation of the National Railroad Adjustment Board.

The absence of such a prohibition in the Railway Labor Act was recognized by spokesmen for the railroads, and legislation supplying it was unsuccessfully urged in connection with a proposed amendment to the Act known as the Donnell Bill, placed before the Senate in 1950. It was not until after this failure to obtain legislative prohibition of such strikes that the courts were asked to outlaw them.

II. Irrespective of any question of its legality under the Railway Labor Act, the District Court was deprived of jurisdiction to enjoin the strike in question by the provisions of the Norris-LaGuardia Act. The Norris-LaGuardia Act is applicable to the railroad industry. The dispute which gave rise to this case was clearly a labor dispute. The Norris-LaGuardia Act flatly prohibits Federal court injunctions against strikes irrespective of any question of their legality. In the absence of some affirmative mandate in subsequent legislation, the Norris-LaGuardia Act may

not be said to have been repealed by inference or implication.

ARGUMENT

I. STRIKES OVER DISPUTES REFERABLE TO THE NATIONAL RAILROAD ADJUSTMENT BOARD ARE NOT UNLAWFUL BY VIRTUE OF THE RAILWAY LABOR ACT OR OTHER PRINCIPLE OF LAW.

In upholding the District Court's right to enjoin a strike over disputes which admittedly could have been submitted to the National Railroad Adjustment Board, the court below reasoned that when Congress amended the Railway Labor Act (45 U.S.C., Sec. 151 et seq.) in 1934 so as to make that tribunal available to either party wishing to submit the dispute for decision, and provided a means for enforcement of the Board's decisions, it thereby outlawed strikes in regard to such disputes. (R. 35.) In the following discussion we will demonstrate the unsoundness of that proposition by showing that prior to enactment of the statute in question the legality of such strikes was clearly recognized; that neither the statute nor its legislative history show any intention by Congress to outlaw strikes of this type; and that subsequent to the Railway Labor Act's adoption, the Congressional understanding that such strikes had not been outlawed was clearly demonstrated by the hearings upon, and rejection of, proposed legislation seeking amendment of the Act for the purpose of making such strikes unlawful.

The Common Law

A clear statement of the common-law rule on the right of laborers to strike is found in 31 American Jurisprudence, Labor, Sec. 192:

"Generally. — It is the settled general American

rule, effected largely without the intervention of legislation, that workmen who are not bound by contract for a definite period, and have not by agreement, freely made, given up such rights, may, without liability, abandon their employment at any time, either singly or in a body, as a means of compelling or attempting to compel their employers to accede to demands for better terms and conditions. Under the rule, laborers who have a just or fancied grievance as to hours of work, wages, etc., about which there is a dispute with their employer, may strike to coerce compliance with their demands. Some courts even hold that they may strike irrespective of whether they have cause for quitting. It is not material that laborers quit their employment by a preconcerted arrangement, that the strike is ordered and carried on by the action and through the instrumentality of a labor union, or that it is known at the time that the act of quitting employment will be attended with injury and damage to the business of the employer. Nor is a strike for betterment of wages or living conditions or for other proper object rendered unlawful by the fact that the indirect purpose of closing a business is thereby accomplished."

The late Chief Justice Taft recognized the common-law right to strike and in *American Steel Foundries v. Tri-City Central Trades Council*, 257 U.S .184 (1921), speaking for a majority of the Court, said:

"A single employee was helpless in dealing with an employer. He was dependent ~~ordinarily~~ on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body, in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such

a lawful purpose has, in many years, not been denied by any court."

More recently in a case involving a strike over grievances of individual employees the legality at common law of such a strike was reaffirmed. Judge Learned Hand in *Douds v. Local* 1250 *et al.*, 173 F2d 764 (1949), who wrote the opinion for a unanimous court, said:

> Page 770. "As we have already indicated, the right to bargain collectively and the right to strike and induce others to do so, are derived from the common-law; it is only in so far as something in the [Taft-Hartley] Act forbids their exercise that their exercise becomes unlawful."

These authorities clearly demonstrate that a strike to compel adjustment of grievances was not only not forbidden at common law but, to the contrary, was a classic example of legal concerted activity. Therefore, it is apparent that no illegality attaches to strikes of railroad employees in support of their grievances or contract claims unless it may be found in the federal statutes governing their employment.

The Railway Labor Act

The modern history of governmental regulation of railroad labor relations begins with the Transportation Act of 1920 (41 Stat. 469) which was enacted at the conclusion or termination of federal control of the railroads in 1920. Congress in enacting this Act intended to encourage carriers and their employees to settle by peaceful means disputes which might result in interruptions to commerce. The Transportation Act of 1920, however, did not alter the legal rights or duties of the parties who were left free to comply with the intent of Congress or to ignore it. *Pennsylvania Railroad Co. v. U.S. Railway Labor Board,* 261 U.S. 72; *Pennsylvania System, etc. v. Pennsylvania Railroad Co.,*

267 U.S. 203. It cannot be contended that this Act deprived employees of their pre-existing common-law right to strike to compel a carrier to adjust or settle grievances.

The Transportation Act of 1920 was superseded some six years later by the Railway Labor Act of 1926 (44 Stat. 577). This Act, just as the predecessor one, was based on a theory of voluntary action of the parties and cooperation in order to avoid interruptions to commerce. The 1926 Act, however, obviously did not deprive employees of the right to strike, for it did not even compel carriers to recognize and bargain on any matters whatsoever with the representatives selected by a majority of the employees in a craft or class. *Texas & New Orleans Railroad Company v. Brotherhood of Railway Clerks*, 281 U.S. 548; *Malone v. Gardner*, 62 F2d 15. During the tenure of the 1926 Act, the employees could enforce any demands concerning wages, hours of service, conditions of work, or grievances only by peaceful persuasion, which was by and large ineffectual, or by coercion through the marshalling of economic strength.[1]

In 1934 Congress amended the Railway Labor Act and for the first time required, as a legal rather than a moral obligation, employees and carriers through their respective representatives to confer and bargain with one another on all disputes in an effort "to avoid any interruption to commerce or to the operation of any carrier engaged therein." 45 U.S.C. § 151. In order thus to "avoid . . . interruptions to commerce" certain preliminary steps were legally prescribed for both parties to a dispute, and if the same were taken, it was felt that accord would most likely be reached

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[1] In jurisdictions which had upheld the right to sue on collective bargaining agreements, claims based on well-defined agreement requirements might be enforceable through the additional remedy of court action at law for breach of contract. The deficiencies of such a method of policing collective bargaining agreements are obvious. Equitable remedies were usually unobtainable because of such doctrines as "mutuality of remedy" and the rule against specific enforcement of employment contracts.

and strikes averted. *Virginian Railway Company v. System Federation No.* 40, 300 U.S. 515. Thus, the 1934 Act in reference to the making or formation of collective agreements required the respective parties to meet, treat, and bargain in good faith in an effort to reach mutually satisfactory terms, 45 U.S.C. § 152 sixth, ninth; *Virginian Railway Company v. System Federation No.* 40, *supra; Brotherhood of Railway and Steamship Clerks v. Atlantic Coast Line R.R.*, 201 F. 2d 36 (C.A. 4th 1953). With respect to disputes arising out of grievances, the Act required that they be handled "in the usual manner" on the property of the carrier, but also empowered either party, at his or its election, to sumbit such disputes as were not settled on the property to the National Railroad Adjustment Board, an expert administrative tribunal whose decisions on disputes submitted were, except insofar as they contained money awards, to be "final and binding." 45 U.S.C. § 153, First (m); cf. *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239. In the event a carrier failed or refused to abide by a decision or award of the National Railroad Adjustment Board the Act provided that "the petitioner or any person for whose benefit such order was made, *may* file" a statutory enforcement suit in the United States District Court for the district "in which he resides or in which is located the principal office of the carrier, or through which the carrier operates. . . ." 45 U.S.C., § 153, First (p); emphasis supplied.

By requiring the representatives of the employees and the carrier to bargain with each other over the matters in dispute, both as to making or formation of collective agreements and as to grievances of individual employees, Congress made amicable adjustment of those matters much more likely. Specifically, with reference to grievances, the creation of the National Railroad Adjustment Board and its accessibility to either party to the dispute made it probable that such disputes would be referred to it. Decision

upon the merits of the grievance by this tribunal encouraged the parties to accept its determination as final, and in the case of a carrier, it was even further encouraged to give effect to an adverse award, because if it failed to do so, it was faced with the prospect of a statutory enforcement suit in which the said award could be enforced through the order of the United States Courts.

However, the Railway Labor Act did not impose upon employees or their representatives a duty to place their grievances before the Adjustment Board; it merely permitted them, if they so desired, to seek to enforce their claims by that method. No section, phrase, or word in that Act expressly or by implication purported to take away from the employees their pre-existing, common-law right to compel the carrier ultimately to settle grievances by resort to the traditional economic weapons of labor, including the strike.

This Court has recognized that the Railway Labor Act is not an all-inclusive piece of legislation controlling every aspect of employer-employee relations in the railroad field. It is, rather, the most recent in a succession of extremely cautious Congressional attempts to regulate *some* of those aspects, in order insofar as possible to promote industrial peace and thus *avoid*, not *prohibit*, interruptions to commerce. If Congress had intended to go so far as to actually prohibit strikes over grievances, then a clear expression of this purpose, akin to the strike prohibition sections of Section 8(b) (4) of the Taft-Hartley Act, would have been included in the Act. No expression of such intent, however, appears, and prohibitions and restraints are not to be read into the Act by implication. As stated by the Court in *General Committee, B.L.E. v. Missouri-K.-T.-R. Co.*, 320 U.S. 324:

> "... The new administrative machinery plus the statutory commands and prohibitions marked a great

advance in *supplementing* negotiation and self-help with specific legal sanctions in enforcement of the Congressional policy.

"But it is apparent on the face of the Act that while Congress dealt with this subject comprehensively, it left the solution of only some of those problems to the courts or to administrative agencies. It entrusted large segments of this field to the voluntary processes of conciliation, mediation, and arbitration. Thus by § 5, 45 USCA § 155, 10A FCA title 45, § 155 First, Congress provided that either party to a dispute might invoke the services of the Mediation Board in a 'dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference' and any other 'dispute not referable' to the Adjustment Board and 'not adjusted in conference between the parties or where conferences are refused.' Beyond the mediation machinery furnished by the Board lies arbitration, § 5, First and Third, § 7, 45 USCA § 157, 10A FCA title 45 § 157. In case both fail there is the Emergency Board which may be established by the President under § 10, 45 USCA § 160, 10A FCA title 45, § 160. In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, *in addition to the available economic weapons,* remain unchanged in large areas of this railway labor field. On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsion of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. *The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate.* (Emphasis supplied.)

Similarly, in *Brotherhood of R.T. v. Toledo, Peoria & W. R.*, 321 U.S. 50, the Court observed that:

"The policy of the Railway Labor Act was to encourage use of the non-judicial processes of negotiation, mediation and arbitration for the adjustment of labor disputes." (321 U.S. p. 58.)

Finally, of particular relevance here, since it involved an "Adjustment Board" type of dispute, is the following statement by the Court in *Moore v. Illinois Central R. Co.*, 312 U.S. 630, 635-636:

"... neither the original 1926 Act, nor the Act as amended in 1934, indicates that the machinery provided for settling disputes was based on a philosophy of legal compulsion. On the contrary, the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature."

Legislative History

In addition to the railroad labor enactments reviewed above, the legislative background of the Railway Labor Act, and particularly of the 1934 amendments thereto, completely fails to support the contention that a prohibition against strikes over grievances and other so-called "minor disputes" is to be implied from the creation of the National Railroad Adjustment Board.

The Senate Committee testimony relied upon by the court below (R. 34) is but an isolated portion of considerable discussion that was had on the subject. It is of course true that by extraction of portions of the testimony relating to the effect of the new legislation upon strikes, it might be made to appear that Congress felt it was taking some action which would outlaw strikes in certain circumstances. However, there are two vital facts in connection with the legislative history which clearly refute any such conclusion:

(1) Substantially all of the testimony related only to the possibility of strikes called to resist an unfavorable or adverse award of the Adjustment Board, and the concern of the members of Congress as to whether, *in establishing the right to bring a court action, under Section 3 First (p) of the new Act, to enforce the Board's award,* Congress might be inadvertently making available to carriers injunctions against strikes;[2] and

(2) The whole matter was left with the recommendation of the chief witness, Mr. Joseph B. Eastman, Federal Coordinator of Transportation, that no provision for issuing injunctions for preventing strikes should be incorporated in the statute until experience had demonstrated whether any actual need for such power existed. Thus Commissioner Eastman said:

> "My own idea would be, let that question arise out of experience and find out whether there is actual need for issuing injunctions for preventing strikes." (Hearings on H.R. 7650, 73rd Congress, 2nd Session, p. 64.)

It is clear, in the light of these two salient facts, that not only did Congress fail to consider any action to prohibit strikes such as the one enjoined below (i.e., where the employees seek to enforce grievances and contract claims by economic strength and bargaining power *in lieu* of resort to the Adjustment Board procedure); it did consider, and *still* failed to deal with, the possibility of strikes *after* resort to the Board, and, in effect, "against" the Board's awards. Instead of attempting to *prohibit* such strikes, it was content to provide machinery calculated to make them less likely to occur.

Additional references to the legislative history of the 1934 amendments to the Act, demonstrating the absence of

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[2]See hearings on H.R. 7650, 73rd Congress, 2nd Session, pp. 60-64.

any Congressional intent to outlaw strikes over matters referable to the Adjustment Board, appear at pages 18-19 of the Petition for Certiorari herein, and these portions of the testimony at the Congressional hearings will undoubtedly be supplemented at length in the briefs of the parties on the merits. We shall accordingly refrain from additional quotation of the testimony here.

Suffice it to say that the legislative history of the 1934 amendments demonstrates a reluctance on the part of Congress to outlaw strikes which is entirely comprehensible in the light of the history of bitter strife that has attended the resort to injunctive process for the settlement of labor disputes in this country. Such history makes it equally inconceivable that Congress could have intended to take away the right to strike by mere implication, without any statement to that effect in the course of its deliberations, and without clear and obvious language in the legislation itself.

Subsequent Congressional Rejection of Respondents' Contentions — The Donnell Bill

As we have noted, there is nothing in the language of the Railway Labor Act or its legislative history which lends credence to respondents' contentions, and the conclusion of the court below, that a strike would be illegal upon the facts in this case. We concluded therefore that employees in the railroad industry have not been deprived of their common law right to strike over disputes of the sort here involved.

Subsequent legislative developments clearly demonstrate the correctness of our position. On April 21, 1950, United States Senator Donnell introduced on the floor of the Senate S. 3463 entitled "A Bill to amend the Railway Labor Act, as amended, so as to *prevent* interference with the movement of interstate commerce, and for other purposes." (Emphasis supplied.) Section 10A of this abortive enactment was as follows:

"Sec. 10A. First. Any strike, including any concerted stoppage of work by employees or any concerted slow-down, sit-down, walk-out, or other concerted interruption of operations by employees, or any lock-out by a carrier, arising out of or in connection with any dispute falling within the purview of this Act, shall be unlawful.

"Second. It shall be unlawful for any person, including a carrier or labor organization, (1) to coerce, instigate, induce, or conspire with, any other such person to interfere by any such unlawful strike or lock-out with the operation of any carrier subject to this Act; or (2) to participate in, or to aid any such strike interfering with the operation of any such carrier, or to give direction or guidance in the conduct thereof or to further the same by the payment of strike, unemployment, or other benefits to those participating therein; or (3) to aid in any such lock-out interfering with the operation of any such carrier by giving direction or guidance to such lock-out or providing funds for the conduct or direction thereof."

Violation of Section 10A was made a misdemeanor for which criminal sanctions were imposed, Section 10A Third; and the United States District Courts were given jurisdiction to issue injunctions upon the application of the Attorney General of the United States or of any state to prevent violations or threatened violations of the Act, Section 10A Fourth.

The above quoted language would have made a strike such as that here involved illegal and subject to criminal and injunctive sanctions had it become a part of the law. This Bill was reported out unfavorably by the Senate Committee on Labor and Public Welfare and never even reached the floor of the Senate. Senate Report No. 2445, Calendar No. 2449, V Sen. Rep. 81st Cong. 2d Sess. Rep. 2445; 96 Cong. Rec. 2d Sess. Part II, page 14657; 96 Cong. Rec. 2d Sess. Part 12, page 16603. Congress when squarely pre-

sented with a bill that unquestionably would have deprived railroad employees of their common-law right to strike rejected it. A clearer expression of intent on the part of Congress to preserve to railroad employees this ancient right of self-help could not be found.

Some of the testimony received by the subcommittee of the Senate Committee on Labor and Public Welfare in the course of its hearings on the Donnell Bill is extremely enlightening. Mr. George Harrison, Grand President of the Brotherhood of Railway and Steamship Clerks, speaking on behalf of 21 standard railway labor organizations affiliated with the Railway Labor Executives' Association stated:

> "For the most part the carriers have applied the awards rendered by the Board, although their failure to do so has resulted in some litigation and caused some strikes. I know of no cases where the employees have not accepted adverse awards of the Board. The carriers' witnesses complained bitterly about these few strikes because the act provides a method of enforcing decisions of the Board through an action in the courts. It must be apparent to anyone familiar with labor-management relations that if the carriers ever force the common use of court procedure in the enforcement of awards of the Adjustment Board, the employees will be compelled to return to the use of economic strength in contract violations in the first instance and refrain from handling cases with the Board. The provisions of this bill providing for a court review of the awards of the Board will completely destroy the effectiveness of the Board and place in the hands of the carriers a weapon with which they will be able to delay the settlement of all disputes, involving the interpretation or application of agreements, with the result that many strikes will inevitably follow.
>
> "The secret of industrial peace in cases involving this type of dispute is the promptness with which the claims are handled. When they cannot be disposed of

with reasonable dispatch, the atmosphere becomes charged with emotion, and as the cases accumulate, the pressure increases until an explosion in the form of a strike will certainly follow." (Hearings before the Subcommittee on Railway Labor Act Amendments to the Committee on Labor and Public Welfare United States Senate, Eighty-first Congress, Second Session on S.3463, p. 177.)

. . . .

"MR. HARRISON. What I mean is this: If the carriers do not depart from the use of court procedure to determine grievances and to bring about compliance with Adjustment Board decisions, then we are heading for trouble and we cannot use the Adjustment Board machinery that is in the law. In your bill, Senator, you propose that every decision rendered by the Adjustment Board would be subject to review by a court. If the railroad, or the losing party, wanted to take it to court and get a review for either side, we say that is bad, that is unworkable, it creates and invites delay, it invites litigation, it creates an expense that would just be impossible for the employees to live with.

"SENATOR DONNELL. You think, therefore, that would result in strikes because of the delay to which you refer?

"MR. HARRISON. Now why do I reason it out that way? You see, *under the present law, if we have a complaint against a railroad company that one of our contracts has been violated, that we cannot settle after a conference with railway management, we may, at our own election, take that dispute to the Railroad Adjustment Board for decision, or we may strike if we want to under the present law.* But we have gone, as the record shows, to the Adjustment Board, went through all the delay and all the hearing and all of the expense to get a decision. Now we get the decision in favor of the applicants, or plaintiffs, the union, and the railroad says, 'Pooh, pooh, we won't put it into effect. If you want to get that out of us, go to court and sue us.' Well we don't want to sue, because we

tried the case once, according to the agreed-opinion procedure, so we threatened to strike, against an arbitrary refusal, to put into effect the decision, after they had their day in court, now they want in this bill proposed by you, to have the right to go into court and get a review of every decision that is handed down by the Adjustment Board. Well, where would we ever get anything settled? That is nonsense, you can't handle labor relations like that." (Id., p. 205; emphasis supplied.)

Mr. Daniel P. Loomis, chairman of the Association of Western Railroads, similarly recognized that under the Railway Labor Act of 1934, as amended, employees had the right to strike over grievances which could have been submitted to the Adjustment Board. He said:

"I should make it clear that the cases which are referable to the National Railroad Adjustment Board are not cases where either side is seeking to change an agreement or to secure different wages, rules, or working conditions. These cases only involve the proper interpretation of the contracts in effect or a grievance arising under such contract.

"There is no excuse for a strike in any of these cases. Where the parties disagree as to the proper interpretation of a contract, several methods are open to have that proper interpretation determined. The parties can submit the question to the National Railroad Adjustment Board; they can arbitrate it under the provisions of the Railway Labor Act; they can agree to set up a special adjustment board on the particular property to dispose of such disputes. Surely a strike should not be called because of the failure of the parties to agree on a proper interpretation of a contract when the law provides means for securing a binding interpretation.

"S. 3463 *would outlaw* strikes in these types of cases and we are heartily in accord with the view that

such strikes *should* be outlawed." (Id. p. 86; emphasis supplied.)

. . . .

"SENATOR DONNELL. Do you know of any instance in which the railroads have failed to abide by a finding of the Adjustment Board?

"MR. LOOMIS. By a finding of the Adjustment Board? I can't call to mind any, in detail, but I believe there probably are, because the Adjustment Board procedure is this, that if a railroad does not comply with an order of the Adjustment Board, then the party in whose favor the award was made may sue in the courts to enforce the order. I think there have been cases where a railroad has not complied with an award of the Adjustment Board and the employee or the brotherhood has brought suit in the courts. That has been true particularly among the non-operating crafts, who are not, I think I should say, quite so apt to resort to threats of economic force as in the case of the operating crafts. In the case of the operating crafts their attitude is generally one that they will not sue to enforce an award. There is no practical right of court review. Their position is simply 'pay the award or we strike.' " (Id., p. 163.)

Mr. C. A. Miller, Vice President and General Counsel for the American Short Line Railroad Association, conceded that employees under the Railway Labor Act have retained their common-law right to strike over grievances. He said:

"Currently, as I have indicated, most of the disputes, especially with the operating railway labor organizations, grow out of grievances. *If the unions are deprived of their right to strike*, and compelled to submit their grievances to the National Railroad Adjustment Board, which was established for that purpose, there will certainly be more 'peace on the rails.' " (Id., p. 69; emphasis supplied.)

The following colloquy was exchanged between the chairman of the Subcommittee, Senator Elbert D. Thomas of Utah, and Mr. P. J. Neff, president of the Corporate Companies and chief executive officer for the trustee of the Missouri-Pacific Railroad Co., Gulf Coast Lines, and International-Great Northern Railroad Co., all of which were in bankruptcy under Section 77. Mr. Neff at this point is testifying about a strike of the employees of the Missouri-Pacific Railroad to compel the adjustment of certain grievances:

"In 1926 the railroads and their employees seeking a peaceable way to settle disputes of this character, requested Congress to provide methods for settlement and Congress did this with the support of all parties in the passage of the Railway Labor Act. Time developed that the machinery set up under the act moved slowly and at the employees' request in 1934 the Railroad Adjustment Board was created. So long as decisions favored employees their cases went to this Board and machinery in the act makes it possible to enforce an award favorable to the employees. But when awards have been unfavorable to employees there has been more and more resistance to their acceptance and more and more use of the strike threat or actual strike. So in my opinion the Railway Labor Act needs to be strengthened in the public interest.

"If time permitted, I would like to tell your committee some of the ridiculous claims which were presented to the carrier in this strike, but I am sure that the experience of all of us has been that in all situations of this kind there is much to be said on both sides. Suffice it to say that for 45 days after the strike began, representatives of the employees and railroad management struggled over the disposition of the cases involved and with the pressure which was on everybody there were, of course, some minor settlements made—and Mr. Senators, I would like to say that some of the gentlemen in this room were part of that conference and they did struggle manfully; we

struggled manfully, all of us, to try and adjust our differences, but nevertheless the strike had to go on because we couldn't compose our differences rapidly enough—but, in the end, the employees agreed to arbitrate the majority of their claims which is just what they could have done back in 1948, and the arbitration board finally agreed upon with minor exceptions sustained the position of the railroad.

"THE CHAIRMAN. May I break in there, Mr. Neff?

"MR. NEFF. Yes, sir.

"THE CHAIRMAN. In all these things you are saying you are describing a situation in collective bargaining and an attempt at mediation. Now as is reflected by this bill, say, there was no right to strike any place, do you think that these deliberations would have been cut down if there had been no right to strike?

"MR. NEFF. Well, Senator, I think if there had been no right to strike that the matter would have been composed. First, a great many of the cases which should have been sent to the Railroad Adjustment Board would have been sent there, and probably disposed of 2 years, or 3 or 4 years, earlier than they were by the decision of that Board. And as for those cases which were not referable under the Railway Labor Act to the Adjustment Board there would have been mediation or, if necessary, a Presidential fact-finding board to decide the issue. So it would not have been necessary to have a strike." (Id., pp. 78-79.)

Mr. J. Carter Fort, Vice President and General Counsel of Association of American Railroads, speaking for his organization, which includes in its membership companies operating more than 95 percent of the class I railroad mileage in the United States and having more than 95 per cent of the class I railroad revenues, stated:

"As to disputes concerning the interpretation of agreements, the present law does afford an opportunity for employees to obtain final and enforceable decisions through the machinery of the National Railroad Adjustment Board set up under the provisions of the amendments of 1934. *However, the law does not require that employees take such disputes to the Adjustment Board or abide by the decisions of the Board. And it does not forbid strikes in connection with disputes falling within the jurisdiction of the Adjustment Board, and there have been many strikes of that kind.*" (Id., p. 13; emphasis supplied.)

It cannot be said, in view of the excerpts above quoted from the Subcommittee's hearings on the Donnell Bill, that eminent spokesmen for both carriers and labor were not of the opinion or did not fully acquaint the United States Senate with the fact that under the Railway Labor Act strikes by employees to compel carriers to settle grievances and to compel compliance with awards of the Adjustment Board were permissible or, at least, not illegal. The demise of that bill is eloquent evidence of the legislative survival of the right of railroad employees to strike for such purpose.

Litigation Following Failure to Obtain Legislative Prohibition of Strike Action

It was not until after the failure of enactment of the Donnell Bill—some 16 years following the creation of the National Railroad Adjustment Board — that the carrier managements, in this and several other court actions, first seriously urged that the effect of the 1934 amendments had been to outlaw strikes of railroad employees over disputes that could be submitted to the Board. In addition to the instant case, the only other Court of Appeals decision is that of the Fifth Circuit in *Brotherhood of Railroad Trainmen v. Central of Georgia Ry. Co.*, 299 F. (2d) 901, now before this Court as No. 84, October Term, 1956, and assigned

for argument immediately preceding this case. The decisions of the two Circuits are, we believe, in direct conflict, and it is of course our position that the correct result was reached by the Court of Appeals for the Fifth Circuit.

In an earlier case arising in the Seventh Circuit, but never appealed, United States District Judge Walter J. LaBuy, in an unreported decision, had reached the same result as in the *Central of Georgia* case, holding that the Norris-LaGuardia Act deprived him of jurisdiction to enjoin a strike for the purpose of securing a carrier's compliance with an award of the Adjustment Board which had sustained certain contract claims of employees. *Grand Trunk Western R.R. Co. v. American Train Dispatchers Association,* U.S. Dist. Ct., N.D. Ill., E. Div., No. 53-C-1595, Sept. 22, 1954. On the other hand, in the recent case of *Kansas City Terminal Ry. v. Manion,* Kansas City (Mo.) Court of Appeals, No. 22522, Nov. 5, 1956, unofficially reported at 39 LRRM 2126, the court followed the decision of the court below in this case. The only other cases of this sort that have come to our attention were not litigated beyond the stage of temporary restraining orders.

It is thus evident that the question of the legality under the Railway Labor Act of strikes in support of grievances and contract claims is one upon which little direct authority is available. The few decisions in point are recent, and as we have pointed out, the question was not litigated until after the failure of passage of the Donnell Bill. This absence of previous cases is undoubtedly the result of the general understanding among eminent counsel active in the railroad labor field, as illustrated by the testimony cited above, that such strikes are not banned by current legislation.

In the foregoing discussion we have shown that strikes of the sort here involved were not illegal under common

law, and that neither the language of the statute nor its legislative history support the conclusion of the court below that they were outlawed by the Railway Labor Act. In any event, however, and irrespective of the question of the strike's legality, we submit that the Norris-LaGuardia Act clearly deprived the District Court of jurisdiction to grant the injunctive relief sought by respondents.

II. THE FEDERAL COURTS ARE WITHOUT JURISDICTION TO ENJOIN STRIKES OVER GRIEVANCES AND CONTRACT DISPUTES IN THE RAILROAD INDUSTRY.

Applicability of the Norris-LaGuardia Act

In 1932, following a long and embittered history of resort to the injunctive process in connection with labor disputes, Congress enacted the Norris-LaGuardia Act (29 U.S.C., Sec. 101 et seq.) with the avowed purpose of according to the individual worker "full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditons of his employment", and freedom "from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection".

While applicable to labor disputes in all industries, it is particularly pertinent here to note that the Norris-LaGuardia Act received its greatest impetus from the history of strike injunctions in railroad labor disputes. This fact was adverted to frequently in the separate opinions of the various Supreme Court Justices in the case of *United States v. United Mine Workers of America*, 330 U.S. 258, where the provisions of the Norris-LaGuardia Act were held inappli-

cable to the Mine Workers' situation *only* on the ground that they were at the time employees of the United States of America, following seizure of the mines under the War Labor Disputes Act of 1943. Illustrative is the following excerpt from Mr. Justice Frankfurter's concurring opinion:

> ". . . It would mean that, in order to protect the public interest, which may be jeopardized just as much whether an essential industry continued under private control or has been temporarily seized by the Government, a court could, at the behest of the Attorney General of the United States, issue an injunction as courts did when they issued the Debs, the Hayes and the Railway Shopmen's injunctions. But it was these very injunctions, secured by the Attorney General of the United States under claim of compelling public emergency, that gave the most powerful momentum to the enactment of the Norris-LaGuardia Act . . ." (330 U.S., p. 315; see also opinion of the Court, by Mr. Chief Justice Vinson, at 330 U.S., 277-278, and especially footnote 29; and dissenting opinion of Mr. Justice Murphy at 330 U.S., 338.)

The method by which Congress elected to achieve these objectives was to severely limit the jurisdiction of the courts of the United States in a number of specifically described instances, and particularly with respect to injunctive relief in connection with labor disputes.

The disputes which gave rise to the instant case clearly fall within the following broad definition of a "labor dispute" as set forth in the Act:

> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants

stand in the proximate relation of employer and employee." (29 U.S.C., Sec. 113 (c).)

Lack of Jurisdiction Unaffected by Questions of Legality or Illegality of Strike.

Of the several provisions in the Norris-LaGuardia Act which operate to exclude from the District Court's jurisdiction the injunctive relief sought by respondents here, the most sweeping in effect are the following portions of Section 4:

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> "(a) Ceasing or refusing to perform any work or to remain in any relation of employment;
>
> . . . . . .
>
> "(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;
>
> . . . . . .
>
> "(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;
>
> "(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
>
> "(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. (29 U.S.C., Sec. 104.)

It is apparent from a reading of these provisions that Congress has seen fit to flatly prohibit the granting by Federal courts of injunctive relief against the acts of striking, giving publicity to the facts involved in labor disputes, urging or inducing strikes or work stoppages, or any of the other specified acts, *irrespective of any question of legality of purpose of the acts sought to be enjoined,* so long as no fraud or violence is involved. Thus, in *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, this Court stated that the Act "does not concern itself with the background or motives of a dispute" (p. 561); and in the case of *Wilson & Co. v. Birl,* 105 F. (2d) 948, the Court of Appeals for the Third Circuit said:

> ". . . The test is objective; not the purpose or intent of the acts sought to be restrained, and not even their illegality; *but whether they come under Sec. 4.*"
>
> ". . . *A strike, therefore, cannot be enjoined.* Whether or not the strike in this case is illegal, because of its purpose, as argued by appellant, is therefore beside the point. The test is no longer given the uncertain elasticity of 'illegality'. *The statute, dealing strictly with procedure, nowhere attempts to define as lawful the acts which it says may not be enjoined. . . .*" (105 F. (2d), p. 951; emphasis supplied.).

The Railway Labor Act Did Not Repeal the Norris-LaGuardia Act as to Strike Injunctions Such as That Sought Here.

Respondents argued below, and the Court of Appeals held (R. 39), that the Railway Labor Act operated to repeal the provisions of the Norris-LaGuardia Act, to the extent that it might otherwise apply in a dispute such as that here involved. Support for this conclusion was sought in the decisions of this Court in *Virginian R. Co. v. System Federation No.* 40, 300 U.S. 515, and other cases where equit-

able relief was given to enforce rights granted by the Railway Labor Act.

It is significant, particularly in vew of the policy declarations of Section 2 of the Norris-LaGuardia Act (29 U.S.C., Sec. 102) making clear that the principal objective was to protect employees against their employers, that these cases did not involve injunctions sought by railroad managements against strikes by their employees.

In any event, however, it is apparent that the *Virginian* case, and others in which this Court upheld injunctive relief in railroad labor disputes, do not lay down any doctrine of general inapplicability of the Norris-LaGuardia Act in the railroad field. Quite the contrary is true, and the opinion in *Graham v. Brotherhood of L. F. & E.*, 338 U.S. 232, makes it clear that the Norris-LaGuardia Act is avoided *only* when the court is called upon "to compel compliance with *positive mandates* of the Railway Labor Act" (p. 237), and to enforce rights affirmatively guaranteed by the Act which would be sacrificed or obliterated if no injunctive relief could be had, such as the right of racial minorities to non-discriminatory representation by their statutory bargaining agents.

Finally, in attributing to Congress an intention to repeal or set aside the Norris-LaGuardia Act insofar as these railroad labor disputes are concerned, the court below read into the Railway Labor Act a philosophy of legal compulsion which, as we pointed out earlier, this Court has repeatedly rejected in cases construing that statute. (*General Committee, B.L.E. v. Missouri-K.T.R. Co., Brotherhood of R.T. v. Toledo, Peoria & W. R.*, and *Moore v. Illinois Central R. Co.*, all *supra*. See also *Switchmen's Union of N.A. v. Nat. Mediation Bd.*, 320 U.S. 297, and *General Committee, B.L.E. v. Southern P. Co.*, 320 U.S. 338.) These decisions plainly disavow the propriety of attempting to interpret

the Railway Labor Act so as to supply, by inference and implication alone, a Congressional purpose to over-ride the but recently adopted Norris-LaGuardia Act and substitute a system of adjudicating railroad labor disputes by the injunctive process.

CONCLUSION

In our discussion we have shown that strikes of the sort here involved, clearly lawful in the absence of statutory prohibition, were not made illegal when Congress adopted the 1934 amendments to the Railway Labor Act. This conclusion is supported by the Act's legislative history; and decisions of this Court have noted the caution and piecemeal fashion with which Congress dealt with this subject, and have established the principle that adjudication and litigation of railroad labor disputes is not to be extended beyond the clear and positive requirements of the statute. We further pointed out that irrespective of any question of the strike's legality, the Norris-LaGuardia Act withdrew from the District Court's jurisdiction the right to enjoin it, and that the latter Act may not be said to have been repealed by mere inference or implication sought to be drawn from the Railway Labor Act, without any positive mandate or expressly created right to be enforced.

We submit that the decision of the court below, in finding an implied prohibition of strikes in the Railway Labor Act and upholding a concomitant right to proceed against them by injunctive process, is not only unsupported by the statute and its legislative history, but is diametrically op-

posed to established principles governing its interpretation and that of the Norris-LaGuardia Act.

Respectfully submitted,

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Dated at Toledo, Ohio, this
9th day of January, 1957.

CERTIFICATE OF SERVICE

I, Richard R. Lyman, one of the attorneys for the Railway Labor Executives' Association, amicus curiae, do hereby certify that on the 9th day of January, 1957, I served the attached brief of amicus curiae upon all parties of record herein by depositing copies thereof in the United States mails, via airmail, postage prepaid, addressed to Mr. John J. Naughton, 139 North Clark Street, Chicago 2, Illinois, and to Henslee, Monek and Murray, Attorneys-at-Law, 139 North Clark Street, Chicago 2, Illinois, attorneys for Petitioners Brotherhood of Railroad Trainmen, etc., et al.; Mr. Walter J. Cummings, Jr., 11 South LaSalle Street, 20th Floor, Chicago 3, Illinois, and Sidley, Austin, Burgess & Smith, Attorneys-at-Law, 11 South LaSalle Street, 20th Floor, Chicago 3, Illinois, Attorneys for Respondents Chicago River and Indiana Railroad Company, et al.

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